

**STATE BAR OF NEVADA**  
**STANDING COMMITTEE ON**  
**ETHICS AND PROFESSIONAL RESPONSIBILITY**

**Formal Opinion No. 57**

**QUESTIONS PRESENTED**

1. Does the work of an in-house attorney at a multi-jurisdictional corporation incorporated in a jurisdiction other than Nevada with the bulk of its operations outside the State, who is licensed to practice law elsewhere but not in the State of Nevada, and who resides outside Nevada, fall within an exception found in Nevada Rule of Professional Conduct 5.5(b)?
2. If the performance of in-house counsel duties to the multi-jurisdictional corporation falls within an exception found in Nevada Rule of Professional Conduct 5.5(b), should the attorney file the report required under Nevada Rule of Professional Conduct 5.5A(c)?
3. May an in-house attorney at a multi-jurisdictional corporation who resides outside Nevada seek a waiver of the residency requirement for a limited practice certification under Nevada Supreme Court Rule 49.1(1)(h), which would allow an otherwise similarly-situated attorney to fulfill those same in-house counsel duties if he or she resided in Nevada?

**ANSWER TO QUESTION ONE**

Yes, the work of an in-house attorney at a multi-jurisdictional corporation incorporated in a jurisdiction other than Nevada with the bulk of its operations outside the State, who is licensed to practice law elsewhere but not in the State of Nevada, and who resides outside Nevada, may fall within the exception found in NRPC 5.5(b)(3).

**DISCUSSION**

Rule 5.5 of the Nevada Rules of Professional Conduct (NRPC) generally prohibits the unauthorized practice of law. The Nevada Supreme Court has established that “what constitutes the practice of law must be determined on a case-by-case basis.” *In re Lerner*, 124 Nev. 1232, 1236, 197 P.3d 1067, 1071 (2008). However, subsection (b) of NRPC 5.5 sets forth several exceptions for a lawyer who is not admitted in this jurisdiction, but who is admitted and in good standing in another jurisdiction of the United States. NRPC 5.5(b)(3) provides an exception when:

The lawyer is an employee of a client and is acting on behalf of the client or, in connection with the client’s matters, on behalf of the client’s other employees, or its commonly owned organizational affiliates in matters related to the business of the employer, provided that the lawyer is acting in this jurisdiction on an occasional basis and not as a regular or repetitive course of business in this jurisdiction.

There are further limitations specified in subsection (d) of the Rule, specifically that the lawyer who is not admitted to practice in Nevada shall not establish a “regular presence” in Nevada or “[r]epresent or hold out to the public” that the lawyer is admitted to practice in Nevada. NRPC 5.5 (d)(2)(i) and (iii).

An in-house attorney at a multi-jurisdictional corporation under the conditions recited would appear to fall within the exception found in NRPC 5.5(b)(3) if the attorney does not establish a regular presence in Nevada or represent or imply that he or she is admitted to practice in Nevada. To err on the side of the exception, the attorney should refrain from the following activities:

- Appearing before any Nevada state or federal court;
- Signing any Nevada pleadings;
- Appearing before any federal or State regulatory agency in Nevada, except in the role of company representative alongside an attorney admitted in this jurisdiction, and
- Rendering or signing legal opinions on Nevada law.

### **ANSWER TO QUESTION TWO**

Yes, an attorney performing in-house counsel duties to the multi-jurisdictional corporation falling within the exception found in NRPC 5.5(b)(3) should file the report required under NRPC 5.5A(c).

### **DISCUSSION**

NRPC 5.5A(a)(1) specifies that the Rule “applies a lawyer who is not admitted in this jurisdiction, but who is admitted and in good standing in another jurisdiction of the United States, and who provides legal services for a Nevada client in connection with transactional or extra-judicial matters that are pending in or substantially related to Nevada.” Subsection (b) of the Rule specifies that a “Nevada client” includes “a business entity doing business in Nevada.” An attorney performing in-house counsel duties to a multi-jurisdictional corporation falling within the exception found in NRPC 5.5(b)(3) would appear to fall within the scope of the reporting requirement of NRPC 5.5A.

### **ANSWER TO QUESTION THREE**

SCR 49.1 makes no provision for a waiver of any of the requirements for limited practice certification under the Rule. An in-house attorney at a multi-jurisdictional corporation who resides outside Nevada does not meet the requirements for a limited practice certification under SCR 49.1, but nevertheless may perform in-house counsel duties to the multi-jurisdictional corporation falling within the exception found in NRPC 5.5(b)(3).

### **DISCUSSION**

Nevada Supreme Court Rule (SCR) 49(1) states that that the State Bar Board of Governors has the ultimate authority in determining the qualifications for admission to practice law in Nevada. *See also State v. State Bar of Nev.*, No. 72321, 399 P.3d 328, 2017 LEXIS 369, at \*12 (Nev. May 17, 2017) (unpublished disposition). Notwithstanding the provisions of Rule 49, SCR

49.1 allows for the limited practice certification of attorneys admitted to practice in any other jurisdiction under certain circumstances. Subsection (1)(h) of the Rule specifies that an attorney “[e]mployed exclusively as in-house counsel for a single corporation (including its subsidiaries and affiliates), association, partnership, or other business entity situated in or qualified to do business in Nevada, whose lawful business consists of activities other than the practice of law or the provision of legal services” may be certified to limited practice. However, subsection (2)(f) requires that an attorney applying for certification under the Rule must “[r]eside, or intend within the next six months to reside, within the State of Nevada, except for those applying for certification under Rule 49.1(1)(d) or (e).” SCR 49.1 makes no provision for a waiver of any of the requirements of limited practice certification under the Rule.

### **CONCLUSION**

The work of an in-house attorney at a multi-jurisdictional corporation incorporated in a jurisdiction other than Nevada with the bulk of its operations outside the State, who is licensed to practice law elsewhere but not in the State of Nevada, and who resides outside Nevada, would appear to fall within the exception found in NRPC 5.5(b)(3) if the attorney does not establish a regular presence in Nevada or represent or imply that he or she is admitted to practice in Nevada. An attorney performing in-house counsel duties to the multi-jurisdictional corporation falling within the exception found in NRPC 5.5(b)(3) should file the report required under NRPC 5.5A(c). An in-house attorney at a multi-jurisdictional corporation who resides outside Nevada does not meet the requirements for a limited practice certification under SCR 49.1, but nevertheless may perform in-house counsel duties to the multi-jurisdictional corporation falling within the exception found in NRPC 5.5(b)(3).

**This opinion is issued by the Standing Committee on Ethics and Professional Responsibility of the State Bar of Nevada, pursuant to S.C.R. 225. It is advisory only. It is not binding upon the courts, the State Bar of Nevada, its Board of Governors, any person or tribunal charged with regulatory responsibilities, or any member of the State Bar.**

### **AUTHORITIES**

SCR 49

SCR 49.1

NRPC 5.5

NRCP 5.5A

*In re Lerner*, 124 Nev. 1232, 1236, 197 P.3d 1067 (2008)

*State v. State Bar of Nev.*, No. 72321, 399 P.3d 328, 2017 LEXIS 369 (Nev. May 17, 2017)